



Rep. Angelo Saviano

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09500HB5503ham002

LRB095 17259 AJ0 48901 a

1 AMENDMENT TO HOUSE BILL 5503

2 AMENDMENT NO. _____. Amend House Bill 5503, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Real Estate Timeshare Act of 1999 is
6 amended by changing Sections 1-15, 5-40, 5-45, 5-60, and 10-25
7 as follows:

8 (765 ILCS 101/1-15)

9 Sec. 1-15. Definitions. In this Act, unless the context
10 otherwise requires:

11 "Accommodation" means any apartment, condominium or
12 cooperative unit, cabin, lodge, hotel or motel room, or other
13 private or commercial structure containing toilet facilities
14 therein that is designed and available, pursuant to applicable
15 law, for use and occupancy as a residence by one or more
16 individuals, or any unit or berth on a commercial cruise line

1 ship, which is included in the offering of a timeshare plan.

2 "Acquisition agent" means a person who, directly or through
3 the person's employees, agents, or independent contractors,
4 induces or attempts to induce by means of a promotion or an
5 advertisement any individual located within the State of
6 Illinois to attend a sales presentation for a timeshare plan.

7 "Advertisement" means any written, oral, or electronic
8 communication that is directed to or targeted to persons within
9 the State of Illinois and contains a promotion, inducement, or
10 offer to sell a timeshare plan, including but not limited to
11 brochures, pamphlets, radio and television scripts, electronic
12 media, telephone and direct mail solicitations, and other means
13 of promotion.

14 "Association" means the organized body consisting of the
15 purchasers of interests in a timeshare plan.

16 "Assessment" means the share of funds required for the
17 payment of common expenses which is assessed from time to time
18 against each purchaser by the managing entity.

19 "Commissioner" means the Commissioner of Banks and Real
20 Estate, or a natural person authorized by the Commissioner, the
21 Office of Banks and Real Estate Act, or this Act to act in the
22 Commissioner's stead.

23 "Component site" means a specific geographic location
24 where accommodations which are part of a multi-site timeshare
25 plan are located. Separate phases of a single timeshare
26 property in a specific geographic location and under common

1 management shall be deemed a single component site.

2 "Developer" means and includes any person or entity, other
3 than a sales agent, acquisition agent, or resale agent, who
4 creates a timeshare plan or is in the business of selling
5 timeshare interests, or employs agents to do the same, or any
6 person or entity who succeeds to the interest of a developer by
7 sale, lease, assignment, mortgage, or other transfer, but the
8 term includes only those persons who offer timeshare interests
9 for disposition in the ordinary course of business.

10 "Dispose" or "disposition" means a voluntary transfer or
11 assignment of any legal or equitable interest in a timeshare
12 plan, other than the transfer, assignment, or release of a
13 security interest.

14 "Exchange company" means any person owning or operating, or
15 both owning and operating, an exchange program.

16 "Exchange program" means any method, arrangement, or
17 procedure for the voluntary exchange of timeshare interests or
18 other property interests. The term does not include the
19 assignment of the right to use and occupy accommodations to
20 owners of timeshare interests within a single-site timeshare
21 plan. Any method, arrangement, or procedure that otherwise
22 meets this definition, wherein the purchaser's total
23 contractual financial obligation exceeds \$3,000 per any
24 individual, recurring timeshare period, shall be regulated as a
25 timeshare plan in accordance with this Act.

26 "Managing entity" means the person who undertakes the

1 duties, responsibilities, and obligations of the management of
2 a timeshare plan.

3 "Offer" means any inducement, solicitation, or other
4 attempt, whether by marketing, advertisement, oral or written
5 presentation, or any other means, to encourage a person to
6 acquire a timeshare interest in a timeshare plan, other than as
7 security for an obligation.

8 "Person" means a natural person, corporation, limited
9 liability company, partnership, joint venture, association,
10 estate, trust, government, governmental subdivision or agency,
11 or other legal entity, or any combination thereof.

12 "Promotion" means a plan or device, including one involving
13 the possibility of a prospective purchaser receiving a
14 vacation, discount vacation, gift, or prize, used by a
15 developer, or an agent, independent contractor, or employee of
16 any of the same on behalf of the developer, in connection with
17 the offering and sale of timeshare interests in a timeshare
18 plan.

19 "Purchaser" means any person, other than a developer, who
20 by means of a voluntary transfer acquires a legal or equitable
21 interest in a timeshare plan other than as security for an
22 obligation.

23 "Purchase contract" means a document pursuant to which a
24 person becomes legally obligated to sell, and a purchaser
25 becomes legally obligated to buy, a timeshare interest.

26 "Resale agent" means a person who, for another and for

1 compensation, or with the intention or expectation of receiving
2 compensation, either directly or indirectly ~~directly or~~
3 ~~through the person's employees or agents,~~ sells, ~~or~~ offers to
4 sell, or advertises to sell a timeshare interest previously
5 sold to a purchaser or solicits an owner of a timeshare
6 interest to list the owner's timeshare interest for sale.

7 "Reservation system" means the method, arrangement, or
8 procedure by which a purchaser, in order to reserve the use or
9 occupancy of any accommodation of a multi-site timeshare plan
10 for one or more timeshare periods, is required to compete with
11 other purchasers in the same multi-site timeshare plan,
12 regardless of whether the reservation system is operated and
13 maintained by the multi-site timeshare plan managing entity, an
14 exchange company, or any other person. In the event that a
15 purchaser is required to use an exchange program as the
16 purchaser's principal means of obtaining the right to use and
17 occupy accommodations, that arrangement shall be deemed a
18 reservation system. When an exchange company utilizes a
19 mechanism for the exchange of use of timeshare periods among
20 members of an exchange program, that utilization is not a
21 reservation system of a multi-site timeshare plan.

22 "Sales agent" means a person, other than a resale agent,
23 who, directly or through the person's employees, agents, or
24 independent contractors, sells or offers to sell timeshare
25 interests in a timeshare plan to any individual located in the
26 State of Illinois.

1 "Timeshare instrument" means one or more documents, by
2 whatever name denominated, creating or governing the operation
3 of a timeshare plan.

4 "Timeshare interest" means and includes either:

5 (1) a "timeshare estate", which is the right to occupy
6 a timeshare property, coupled with a freehold estate or an
7 estate for years with a future interest in a timeshare
8 property or a specified portion thereof; or

9 (2) a "timeshare use", which is the right to occupy a
10 timeshare property, which right is neither coupled with a
11 freehold interest, nor coupled with an estate for years
12 with a future interest, in a timeshare property.

13 "Timeshare period" means the period or periods of time when
14 the purchaser of a timeshare plan is afforded the opportunity
15 to use the accommodations of a timeshare plan.

16 "Timeshare plan" means any arrangement, plan, scheme, or
17 similar device, other than an exchange program, whether by
18 membership agreement, sale, lease, deed, license, or
19 right-to-use agreement or by any other means, whereby a
20 purchaser, in exchange for consideration, receives ownership
21 rights in or the right to use accommodations for a period of
22 time less than a full year during any given year, but not
23 necessarily for consecutive years. A timeshare plan may be:

24 (1) a "single-site timeshare plan", which is the right
25 to use accommodations at a single timeshare property; or

26 (2) a "multi-site timeshare plan", which includes:

1 (A) a "specific timeshare interest", which is the
2 right to use accommodations at a specific timeshare
3 property, together with use rights in accommodations
4 at one or more other component sites created by or
5 acquired through the timeshare plan's reservation
6 system; or

7 (B) a "non-specific timeshare interest", which is
8 the right to use accommodations at more than one
9 component site created by or acquired through the
10 timeshare plan's reservation system, but including no
11 specific right to use any particular accommodations.

12 "Timeshare property" means one or more accommodations
13 subject to the same timeshare instrument, together with any
14 other property or rights to property appurtenant to those
15 accommodations.

16 Notwithstanding any other rulemaking authority that may
17 exist, neither the Governor nor any agency or agency head under
18 the jurisdiction of the Governor has any authority to make or
19 promulgate rules to implement or enforce the provisions of this
20 amendatory Act of the 95th General Assembly. If, however, the
21 Governor believes that rules are necessary to implement or
22 enforce the provisions of this amendatory Act of the 95th
23 General Assembly, the Governor may suggest rules to the General
24 Assembly by filing them with the Clerk of the House and
25 Secretary of the Senate and by requesting that the General
26 Assembly authorize such rulemaking by law, enact those

1 suggested rules into law, or take any other appropriate action
2 in the General Assembly's discretion. Nothing contained in this
3 amendatory Act of the 95th General Assembly shall be
4 interpreted to grant rulemaking authority under any other
5 Illinois statute where such authority is not otherwise
6 explicitly given. For the purposes of this amendatory Act of
7 the 95th General Assembly, "rules" is given the meaning
8 contained in Section 1-70 of the Illinois Administrative
9 Procedure Act, and "agency" and "agency head" are given the
10 meanings contained in Sections 1-20 and 1-25 of the Illinois
11 Administrative Procedure Act to the extent that such
12 definitions apply to agencies or agency heads under the
13 jurisdiction of the Governor.

14 (Source: P.A. 91-585, eff. 1-1-00.)

15 (765 ILCS 101/5-40)

16 Sec. 5-40. Resale agent duties. ~~A whether registered or~~
17 ~~exempt from registration under Section 5-35, a~~ resale agent
18 shall comply with all of the following:

19 (a) Prior to engaging in any resale activities on behalf of
20 any owner of a timeshare interest or accepting anything of
21 value from any owner of a timeshare interest, a resale agent
22 shall enter into a listing agreement with that owner. Every
23 listing agreement shall be in writing and signed by both the
24 resale agent and the timeshare interest owner. The requirements
25 of the written listing agreement shall be established by rule,

1 but at a minimum the listing agreement shall disclose the
2 following:

3 (1) Whether any person other than the timeshare
4 interest owner may use the timeshare interest during the
5 period before the timeshare interest is resold.

6 (2) Whether any person other than the timeshare
7 interest owner may rent or exchange the use of the
8 timeshare interest during the period before the timeshare
9 interest is resold.

10 (3) The name of any person who will receive any rents,
11 profits, or other consideration generated from the use of
12 the timeshare interest during the period before the
13 timeshare interest is resold.

14 (4) A detailed description of any relationship between
15 the resale agent and any other person who receives any
16 benefit from the use of the timeshare interest.

17 (5) A description of any fee, including the amount, to
18 be paid by the timeshare interest owner to the resale agent
19 prior to the sale of the timeshare interest. If any such
20 fee is charged by the resale agent prior to the sale of the
21 timeshare interest, then a statement must be included
22 disclosing either (A) the number of timeshare interests
23 sold by the resale agent for each of the past 3 years or
24 (B) the ratio or percentage of the number of listings
25 versus the number of timeshare interests sold by the resale
26 agent for each of the past 3 years.

1 (6) A description of the amount or percentage and
2 procedures for paying any commissions due to the resale
3 agent upon resale of the timeshare interest. ~~the method of~~
4 ~~compensation, a definite date of termination, whether any~~
5 ~~fees are non refundable, and whether the agreement permits~~
6 ~~the timeshare resale agent or any other person to make any~~
7 ~~use whatsoever of the owner's timeshare interest or receive~~
8 ~~any rents or profits generated from such use of the~~
9 ~~timeshare interest.~~

10 (b) A resale agent shall maintain records as required by
11 rule. The records required to be maintained include, but are
12 not limited to, all listing agreements, copies of disbursement
13 authorizations in accordance with subsection (c), and resale
14 contracts.

15 (c) A resale agent who collects any fees prior to a
16 transfer of an interest from any owner shall deposit the fees
17 in an escrow account. Any fees that are to be paid to the
18 resale agent prior to closing may be disbursed from the escrow
19 account only upon receipt of a disbursement authorization,
20 signed by the owner, in the following form:

21 "I, (name of owner), am the owner of a timeshare
22 interest in (name of timeshare plan). I understand that for
23 my protection I can require the entire fee to be held in
24 escrow until the closing on the resale of my timeshare
25 interest, but I am authorizing a release before the
26 transfer in the following amount: (amount written in words)

1 (\$ (amount in numbers)), for the following purpose or
2 purposes (description of purpose or purposes). I
3 understand that the resale agent is regulated by the Office
4 of Banks and Real Estate under the Real Estate Timeshare
5 Act of 1999. The Office of Banks and Real Estate requires
6 the resale agent to obtain this disbursement authorization
7 with my signature before disbursement of my funds."

8 (d) A resale agent shall utilize a purchase agreement that
9 discloses to a purchaser of a timeshare interest all of the
10 following:

11 (1) A legally sufficient description of the timeshare
12 interest being purchased.

13 (2) The name and address of the managing entity of the
14 timeshare property.

15 (3) The current year's assessment for the common
16 expenses allocated to the timeshare interest being
17 purchased including the time period to which the assessment
18 relates and the date on which it is due. If not included in
19 the applicable common expense assessment, the amount of any
20 real or personal property taxes allocated to the timeshare
21 interest being purchased.

22 (3.5) Whether all assessments and real property taxes
23 against the timeshare interest are paid in full and, if
24 not, the amount owed and the consequences of failure to pay
25 any assessment or real property taxes.

26 (4) A complete and accurate disclosure of the terms and

1 conditions of the purchase and closing, including the
2 obligations of the owner, the purchaser, or both for
3 closing costs and the title insurance.

4 (5) The entity responsible for providing notification
5 to the managing entity of the timeshare plan and the
6 applicable exchange company regarding any change in the
7 ownership of the timeshare interest.

8 (6) A statement of the first year in which the
9 purchaser is entitled to receive the actual use rights and
10 occupancy of the timeshare interest, as determined by the
11 managing entity of the timeshare plan and any exchange
12 company.

13 (6.5) The place where the documents of formation of the
14 association, if any, and the timeshare instrument may be
15 obtained, together with the following disclosure:

16 "There are many important documents relating to the
17 timeshare plan that you should review prior to purchasing a
18 timeshare interest, which may include the declaration of
19 restrictions, covenants, and conditions; the owners'
20 association articles and bylaws; the current year's
21 operating and reserve budgets; and any rules and
22 regulations affecting the use of the timeshare plan
23 accommodations and amenities."

24 (7) In making the disclosures required by this
25 subsection (d), the timeshare resale agent may rely upon
26 information provided in writing by the owner or managing

1 entity of the timeshare plan.

2 (8) The purchaser's 5-day cancellation period as
3 required by Section 10-10.

4 (9) Any other information determined by the Office of
5 Banks and Real Estate and established by rule.

6 (e) A resale agent shall be licensed as a real estate
7 broker or salesperson pursuant to the provisions of the Real
8 Estate License Act of 2000 or its successor Act.

9 (f) Notwithstanding any other rulemaking authority that
10 may exist, neither the Governor nor any agency or agency head
11 under the jurisdiction of the Governor has any authority to
12 make or promulgate rules to implement or enforce the provisions
13 of this amendatory Act of the 95th General Assembly. If,
14 however, the Governor believes that rules are necessary to
15 implement or enforce the provisions of this amendatory Act of
16 the 95th General Assembly, the Governor may suggest rules to
17 the General Assembly by filing them with the Clerk of the House
18 and Secretary of the Senate and by requesting that the General
19 Assembly authorize such rulemaking by law, enact those
20 suggested rules into law, or take any other appropriate action
21 in the General Assembly's discretion. Nothing contained in this
22 amendatory Act of the 95th General Assembly shall be
23 interpreted to grant rulemaking authority under any other
24 Illinois statute where such authority is not otherwise
25 explicitly given. For the purposes of this amendatory Act of
26 the 95th General Assembly, "rules" is given the meaning

1 contained in Section 1-70 of the Illinois Administrative
2 Procedure Act, and "agency" and "agency head" are given the
3 meanings contained in Sections 1-20 and 1-25 of the Illinois
4 Administrative Procedure Act to the extent that such
5 definitions apply to agencies or agency heads under the
6 jurisdiction of the Governor.

7 (Source: P.A. 91-585, eff. 1-1-00.)

8 (765 ILCS 101/5-45)

9 Sec. 5-45. Amendment to registration information or public
10 offering statement. The developer, resale agent, and exchange
11 company shall amend or supplement their disclosure documents
12 and registration information to reflect any material change in
13 any information required by this Act or the rules implementing
14 this Act. All such amendments, supplements, and changes shall
15 be filed with the Office of Banks and Real Estate within 30 ~~20~~
16 calendar days of the material change.

17 Notwithstanding any other rulemaking authority that may
18 exist, neither the Governor nor any agency or agency head under
19 the jurisdiction of the Governor has any authority to make or
20 promulgate rules to implement or enforce the provisions of this
21 amendatory Act of the 95th General Assembly. If, however, the
22 Governor believes that rules are necessary to implement or
23 enforce the provisions of this amendatory Act of the 95th
24 General Assembly, the Governor may suggest rules to the General
25 Assembly by filing them with the Clerk of the House and

1 Secretary of the Senate and by requesting that the General
2 Assembly authorize such rulemaking by law, enact those
3 suggested rules into law, or take any other appropriate action
4 in the General Assembly's discretion. Nothing contained in this
5 amendatory Act of the 95th General Assembly shall be
6 interpreted to grant rulemaking authority under any other
7 Illinois statute where such authority is not otherwise
8 explicitly given. For the purposes of this amendatory Act of
9 the 95th General Assembly, "rules" is given the meaning
10 contained in Section 1-70 of the Illinois Administrative
11 Procedure Act, and "agency" and "agency head" are given the
12 meanings contained in Sections 1-20 and 1-25 of the Illinois
13 Administrative Procedure Act to the extent that such
14 definitions apply to agencies or agency heads under the
15 jurisdiction of the Governor.

16 (Source: P.A. 91-585, eff. 1-1-00.)

17 (765 ILCS 101/5-60)

18 Sec. 5-60. Registration; offer or disposal of interest.

19 (a) A developer or ~~an~~ exchange company, ~~or resale agent,~~ or
20 any of their agents, shall not sell, offer, or dispose of a
21 timeshare interest unless all necessary registrations are
22 filed and approved by the Office of Banks and Real Estate, or
23 while an order revoking or suspending a registration is in
24 effect.

25 (b) An applicant for registration under this Act shall

1 submit the necessary information to complete the application,
2 as required by the Office of Banks and Real Estate, within 6
3 months from the date the initial registration application was
4 received by the Office of Banks and Real Estate. If the
5 applicant fails to submit the information necessary to complete
6 the application as required by the Office of Banks and Real
7 Estate within the six month period, said application shall be
8 voided, and a new registration application with applicable fees
9 must be submitted.

10 (c) Notwithstanding any other rulemaking authority that
11 may exist, neither the Governor nor any agency or agency head
12 under the jurisdiction of the Governor has any authority to
13 make or promulgate rules to implement or enforce the provisions
14 of this amendatory Act of the 95th General Assembly. If,
15 however, the Governor believes that rules are necessary to
16 implement or enforce the provisions of this amendatory Act of
17 the 95th General Assembly, the Governor may suggest rules to
18 the General Assembly by filing them with the Clerk of the House
19 and Secretary of the Senate and by requesting that the General
20 Assembly authorize such rulemaking by law, enact those
21 suggested rules into law, or take any other appropriate action
22 in the General Assembly's discretion. Nothing contained in this
23 amendatory Act of the 95th General Assembly shall be
24 interpreted to grant rulemaking authority under any other
25 Illinois statute where such authority is not otherwise
26 explicitly given. For the purposes of this amendatory Act of

1 the 95th General Assembly, "rules" is given the meaning
2 contained in Section 1-70 of the Illinois Administrative
3 Procedure Act, and "agency" and "agency head" are given the
4 meanings contained in Sections 1-20 and 1-25 of the Illinois
5 Administrative Procedure Act to the extent that such
6 definitions apply to agencies or agency heads under the
7 jurisdiction of the Governor.

8 (Source: P.A. 91-585, eff. 1-1-00.)

9 (765 ILCS 101/10-25)

10 Sec. 10-25. Liability; material misrepresentation.

11 (a) A developer or other person offering a timeshare plan
12 may not do any of the following:

13 (1) Misrepresent a fact material to a purchaser's
14 decision to buy a timeshare interest.

15 (2) Predict specific or immediate increases in the
16 value of a timeshare interest represented over a period of
17 time, excluding bona fide pending price increases by the
18 developer.

19 (3) Materially misrepresent the qualities or
20 characteristics of accommodations or the amenities
21 available to the occupant of those accommodations.

22 (4) Misrepresent the length of time accommodations or
23 amenities will be available to the purchaser of a timeshare
24 interest.

25 (5) Misrepresent the conditions under which a

1 purchaser of a timeshare interest may exchange the right of
2 his or her occupancy for the right to occupy other
3 accommodations.

4 (b) A developer or other person using a promotion in
5 connection with the offering of a timeshare interest shall
6 clearly disclose all of the following:

7 (1) That the purpose of the promotion is to sell
8 timeshare interests, which shall appear in bold face or
9 other conspicuous type.

10 (2) That any person whose name or address is obtained
11 during the promotion may be solicited to purchase a
12 timeshare interest.

13 (3) The name of each developer or other person trying
14 to sell a timeshare interest through the promotion, and the
15 name of each person paying for the promotion.

16 (4) The complete rules of the promotion.

17 (5) The method of awarding prizes, gifts, vacations,
18 discount vacations, or other benefits under the promotion;
19 a complete and fully detailed description, including
20 approximate retail value, of all prizes, gifts, or benefits
21 under the promotion; the quantity of each prize, gift, or
22 benefit to be awarded or conferred; and the date by which
23 each prize, gift, or benefit will be awarded or conferred.

24 (6) Any other disclosures provided by rule.

25 (c) If a person represents that a prize, gift, or benefit
26 will be awarded in connection with a promotion, the prize,

1 gift, or benefit must be awarded or conferred in the manner
2 represented, and on or before the date represented.

3 (d) A developer or other person using a promotion in
4 connection with the offering of a timeshare interest shall
5 provide the disclosures required by this Section in writing or
6 electronically to the prospective purchaser at least once
7 before the earlier of (1) a reasonable period before the
8 scheduled sales presentation to ensure that the prospective
9 purchaser receives the disclosures before leaving to attend the
10 sales presentation or (2) the payment of any nonrefundable
11 monies by the prospective purchaser in regard to the promotion.

12 (e) A developer or other person using a promotion in
13 connection with the offering of a timeshare interest is not
14 required to provide the disclosures required by this Section in
15 every advertisement or other written, oral, or electronic
16 communication provided or made to a prospective purchaser.

17 (f) Notwithstanding any other rulemaking authority that
18 may exist, neither the Governor nor any agency or agency head
19 under the jurisdiction of the Governor has any authority to
20 make or promulgate rules to implement or enforce the provisions
21 of this amendatory Act of the 95th General Assembly. If,
22 however, the Governor believes that rules are necessary to
23 implement or enforce the provisions of this amendatory Act of
24 the 95th General Assembly, the Governor may suggest rules to
25 the General Assembly by filing them with the Clerk of the House
26 and Secretary of the Senate and by requesting that the General

1 Assembly authorize such rulemaking by law, enact those
2 suggested rules into law, or take any other appropriate action
3 in the General Assembly's discretion. Nothing contained in this
4 amendatory Act of the 95th General Assembly shall be
5 interpreted to grant rulemaking authority under any other
6 Illinois statute where such authority is not otherwise
7 explicitly given. For the purposes of this amendatory Act of
8 the 95th General Assembly, "rules" is given the meaning
9 contained in Section 1-70 of the Illinois Administrative
10 Procedure Act, and "agency" and "agency head" are given the
11 meanings contained in Sections 1-20 and 1-25 of the Illinois
12 Administrative Procedure Act to the extent that such
13 definitions apply to agencies or agency heads under the
14 jurisdiction of the Governor.

15 (Source: P.A. 91-585, eff. 1-1-00.)

16 (765 ILCS 101/5-35 rep.)

17 Section 10. The Real Estate Timeshare Act of 1999 is
18 amended by repealing Section 5-35.

19 Section 97. Severability. The provisions of this Act are
20 severable under Section 1.31 of the Statute on Statutes.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."